IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8937 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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M/S K S DIESELS LIMITED - Petitioner(s)

Versus

VALI MOHMED A QURESHI - Respondent(s)

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Appearance :

MR NAYAK for M/S TRIVEDI & GUPTA for Petitioner No(s).: 1.

MR PC KAVINA for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 11/08/2005

ORAL JUDGMENT

1.0 The petitioner Company has challenged the award dated 29.07.1992 passed by the Labour Court, Rajkot in

Reference (LCR) No. 479 of 1982, whereby the petitioner was directed to reinstate the respondent with continuity of service and full back wages. However, a penalty of stoppage of three increments with future effect was imposed on the respondent.

2.0 The short facts of the case are that the respondent herein was working as an Operator with the petitioner Company. Show cause notice dated 27.10.1980 was issued and served on the respondent as to why departmental inquiry should not be initiated and disciplinary action should not be taken against him, on account of allegations of serious misconduct while discharging his duties. Pursuant to the above, charge-sheet was issued, and thereafter, departmental inquiry was initiated against him. Since the charges were proved, the respondent was dismissed from the service vide order dated 17.12.1981.

2.1 Against the said action, the respondent raised a dispute, which, ultimately, culminated into a reference. The Labour Court, after hearing both the parties, passed the award with the aforesaid directions. Hence, this petition.

3.0 I have heard learned counsel for the parties and perused the documents placed on record. While admitting the matter on 29.12.1992, this Court had stayed the implementation of the impugned award on condition that 25% of the back wages are deposited in the Labour Court, Rajkot.

4.0 Having gone through the impugned award, I am in complete agreement with the reasonings given by and the findings arrived at by the Labour Court while granting reinstatement with continuity in service to the petitioner. The Labour Court, while exercising powers under Section 11(A) of the Industrial Disputes Act, 1947, has rightly imposed a penalty of stoppage of three increments with future effect while substituting the order of dismissal. However, it ought not to have granted any back wages to the respondent. Considering the fact that 25 % of the back wages has been deposited before the Labour Court pursuant to the orders of this Court, it would be appropriate to permit the respondent to withdraw the said amount without effecting any further recovery from the petitioner.

4.1 In above view of the matter, the respondent workman shall be permitted to withdraw the 25 % of the back wages that has been deposited before the Labour Court pursuant to the order of this Court. However, the respondent shall not be entitled for the balance 75 % of back wages in view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., pg.176, wherein it has been held that a workman has no automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case. Similar observations have been made in a decision in the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C., pg.137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, the respondent cannot be said to entitled for the balance 75 % of the back wages.

5.0 In above view of the matter, the petition is partly allowed. The impugned award of the Labour Court so far as the balance 75 % of the back wages is concerned, it is quashed and set aside. The remaining part of the award of

the Labour Court is confirmed. The petitioner is directed to implement the impugned award of the Labour Court within a period of three months from the receipt of writ of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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